

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Joseph D. Thornblad,

Petitioner,

v.

Civil No. 09-439 (JNE/SRN)
ORDER

Robin Christopher Vue-Benson and
Cal Ludeman,

Respondents.

This case is before the Court on a Report and Recommendation issued by the Honorable Susan Richard Nelson, United States Magistrate Judge, on February 25, 2009. The magistrate judge recommended that Petitioner's application for a writ of habeas corpus under 28 U.S.C. § 2254 be denied, that his application for leave to proceed in forma pauperis be denied, and that this action be dismissed for lack of jurisdiction. Petitioner objected to the Report and Recommendation. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation.

An appeal cannot be taken from a final order denying an application under section 2254 without a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2006); Fed. R. App. P. 22(b)(1). A court cannot grant a certificate of appealability unless the applicant has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a district court rejects claims on procedural grounds, a certificate of appealability "should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Because Petitioner has not demonstrated that reasonable jurists would find

the applicability of 28 U.S.C. § 2244 (2006) debatable, the Court declines to grant him a certificate of appealability. Accordingly, IT IS ORDERED THAT:

1. Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 [Docket No. 1] is DENIED.
2. Petitioner's application for leave to proceed in forma pauperis [Docket No. 2] is DENIED.
3. This action is summarily DISMISSED for lack of jurisdiction.
4. Petitioner is not entitled to a certificate of appealability.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 16, 2009

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge